

Memo

To: File
From: Mark Murtaugh
CC:
Date: TIME
Re: Contributions Deductible as Business Expenses

Facts

Beginning in 2013, Patient Services and Solutions, Inc. (PSS) provides pharmacy services for the distribution of first dose and refills of COPAXONE® on behalf of Teva Pharmaceutical Industries Ltd. (TPI) amongst other services that were historically performed by Teva Neuroscience Inc (TN).

PSS makes regular cash donations throughout the year to the Medicare Patient Assistance Program, a qualified 501(c)(3) organization specifically to subsidize co-pays of COPAXONE® patients who may need financial assistance. In 2012 and through 6/30/13 these contributions amounted to approximately \$48.275 million and \$34.125 million, respectively.

This donation is reimbursed fully by TPI.

Issue

Do the payments that PSS make to Medicare Patient Assistance Program qualify as a business expense instead of charitable contribution?

Conclusion

The payments to Medicare Patient Assistance Program are made with expectation of financial return commensurate with the amount donated and should therefore be deducted as business expense.

Discussion

A business expense deduction is generally not allowable for a contribution made to a charitable organization¹ however donations to organizations which bear a direct relationship to the taxpayer's business and are made with a reasonable expectation of a financial return commensurate with the amount of the donation may constitute allowable deductions as business expenses.² With

¹ IRC §162(b)

² Federal Regulation §1.162-15(b)

COPAXONE® generating US sales of \$2.95 billion in 2012, the taxpayer has a reasonable expectation of financial return commensurate with its contribution of \$48.275 million in 2012 and \$34.125 million through 6/30/13.

A strictly contractual obligation on the part of the charity *is not* required, as long as the consideration justifies a “reasonable expectation” of financial return. Yet, to entitle the taxpayer to a business expense deduction, the expected return must be:

- (1) of a *financial* nature; and
- (2) not only more than nominal, but “commensurate with” the payment or other transfer.³

In the Sarah Marquis case, the petitioner, a travel agent, regularly transacted a large portion of her business with clients who were exempt as charitable organizations under sec. 170. At the end of each year, she made payments to them keyed to the amount, character and profitability of such business. The contributions were allowed as business expenses because they were a substantial, continuing and integral part of the business.

³ Marquis, Sarah, (1968) 49 TC 695, acq 1971-2 CB 3